



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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June 23, 2000

Mr. Patrick Stevens
Director, Environmental Policy
Wisconsin Manufacturers and Commerce
501 E. Washington Avenue
Madison, WI 53707-2944

Subject: Brownfields/RCRA Corrective Action

Dear Mr. Stevens:

Thank you for your letter dated April 27, 2000. Before I respond directly to your letter, I would like to provide some historical information for background purposes.

As you will recall, approximately 5 years ago I established an advisory committee to help the Department define the strategic direction for and organization of the cleanup programs within DNR. The work of this committee culminated in a Report entitled: Strategic Direction and Organization of the Remediation and Redevelopment Program, September 1995.

That Report states: "the Remediation and Redevelopment Program should be responsible for overseeing cleanup activities at hazardous waste facilities currently cleaned up in accordance with corrective action and closure authorities" and "the NR 700 rule series should be uniformly applied to all environmental remediation actions". The Report goes on to say: "the Department should aggressively seek concurrence with a cultural change in the relationship it has with EPA to redefine state-federal partnership and seek EPA's assistance in leveraging other federal agencies with the capacity to assist in converting contaminated lands to beneficial use."

As a follow-up to these recommendations, a series of discussions were initiated with EPA during the fall of 1995 on our ability to utilize the NR 700 series for overseeing hazardous waste cleanups. On December 15, 1995 EPA sent us a letter (see Attachment I) indicating that they generally supported our approach for implementing a consolidated cleanup program, provided certain key hazardous waste requirements remain in-place. This letter resulted in the Department issuing guidance in May, 1997 (see Attachment II) which specified how remediation of hazardous waste cases was to take place. These documents provide guidance to our staff as well as other interested parties that we intend to utilize the NR 700 series to the greatest degree possible when addressing hazardous waste cleanups. I believe we have made substantial progress in implementing a consolidated cleanup program since the issuance of this guidance.

Mr. Patrick Stevens – May 30, 2000

More recently, additional issues have been raised in addressing hazardous waste cleanups. This includes the role of soil performance standards, natural attenuation and institutional controls in remedy selection and case closeout decisions; the administrative process to be used for the in-situ treatment of hazardous waste; what actions constitute “active management” within an Area of Contamination; as well as the applicability of liability protection to lenders and local governmental units. While the Department strongly supports building these provisions into our overall approach for addressing hazardous waste cleanups we anticipate the liability issues will be the most challenging to resolve. In evaluating the options for all of these issues, we felt pursuing a Regulatory Innovation Agreement under the joint EPA/State Agreement on Regulatory Innovation was our best chance for obtaining concurrence from EPA to implement these provisions.

I share your concerns that we do not want any unnecessary barriers to the cleanup and redevelopment of Brownfields in Wisconsin. We are confident that upon evaluation, EPA will look favorably on our proposal to continue using natural attenuation and institutional controls at hazardous waste cases, consistent with our existing rules and guidance. In addition, we feel that expanding the liability protections at hazardous waste cleanups to local governmental units and lenders, in a manner similar to the existing statutory language for other cleanups is extremely important to help further encourage Brownfields cleanup and redevelopment.

We intend to continue working closely with the Brownfields Study Group, the Legislature and the Governor’s Office to make our vision of a consolidated cleanup program a reality. We look forward to your continued interest and support in our efforts.

If you have any questions regarding this letter, or need more information please do not hesitate to contact Mark Giesfeldt at 608-267-7562.

Sincerely,

George E. Meyer
Secretary

c: Air and Waste Management Team
Waste Management Team
RR Management Team